the judges personally as commissioners and not upon them as a court. See *U. S.* v. *Ferreira, supra.*

The recent Recount Act in New York provided that on petition of a candidate for election, the Supreme Court should appoint commissioners to count the ballots, attorneys representing the candidates being present; that any ballot then disputed should be passed upon by a Supreme Court Justice, with a final review by the Appellate Division, and that the result of this count should determine to whom the Supervisor of Elections should issue an election certificate. The Second Department of the Appellate Division held the statute constitutional whereas the First Department considered it unconstitutional. *People ex rel. Metz* v. *Maddox* (1907) 105 N. Y. Supp. 702; *People ex rel. Metz* v. *Dayton* (1907) 105 N. Y. Supp. 809. From the standpoint of the imposition of ministerial duties upon the court, the point most considered by the courts and counsel, the former view seems the correct one. Admitting that the act of counting the ballots is ministerial, there is a clear judicial element in determining how they shall be counted, and these particular judicial determinations taken in connection with the ministerial part of the procedure seem to bring the case within the sphere of quasi-judicial functions properly exercisable by the courts under the authorities cited above. The Court of Appeals held the Act unconstitutional as being either a recanvass by a body not bi-partisan as required by Art. 2, Sec. 6, Cons., or a judicial proceeding without trial by jury. (Nov. 19th, 1907.)

CRIMES PUNISHABLE IN DIFFERENT JURISDICTIONS.—Crimes punishable in different jurisdictions may be grouped into three classes: first, offenses committed upon a vessel or car passing through A and B; second, offenses committed partly in A and partly in B; third, offenses committed wholly in A, but which under particular circumstances, and by a fiction of law are held to "continue" into B. Statutes in a few States provide that crimes of the first class may be punished in any jurisdiction through which or into which the vessel or car has passed on that trip, if their locality cannot be determined. *State* v. *Timmens* (1860) 4 Minn. 325; cf. *Watt* v. *People* (1888) 126 Ill. 9. Though held constitutional, they can be supported only from practical necessity and not on principal. *State* v. *Anderson* (1905) 191 Mo. 134. Crimes of the second class were not punishable at common law. Thus if a man were wounded in one county, and died in another, the offender was indictable in neither. 4 Bl. Comm. 304; 2 Hawk. P. C., c. 25 § 36; 1 Chitty, Crim. Law 177. The statute of 2 & 3 Ed. VI remedied this by providing for an indictment in either county, and similar statutes exist generally in this country and have been held constitutional. *Commonwealth* v. *Jones* (1904) 118 Ky. 889; *Commonwealth* v. *Parker* (1824) 2 Pick. 550, 558; *Coleman* v. *State* (1903) 83 Miss. 290; *State* v. *Blunt* (1892) 110 Mo. 323; *State* v. *Pauley* (1860) 12 Wis. 599. They comprehend not only homicide, but also the pollution in A and the nuisance resulting in B, *State* v. *Refining Co.* (1902) 117 Ia. 524; *State* v. *Herring* (1898) 21 Ind. App. 157, the forgery of a signature to an instrument in A and of the filling in of the blanks in B, *State* v. *Spayde* (1899) 110 Ia. 726, the making of false representations in A and the obtaining of money in B, *People* v. *Dimmick* (1887) 107 N. Y. 13; *People* v. *Peckens* (1897) 153 N. Y. 576, a promise of mar-

riage in A and a seduction in B, *People* v. *Crotty* (1890) 9 N. Y. Supp. 937, an operation in A and a final procurement of abortion in B. *Hawk* v. *State* (1897) 148 Ind. 238.

The law of continuing crimes springs from cases involving larceny. At common law where goods were stolen in one county and carried into another the thief was indictable in the second county for larceny, the necessary trespass element being supplied by the fiction of a continuing trespass. *Commonwealth* v. *Andrews* (1806) 2 Mass. 14; *State* v. *Williams* (1898) 147 Mo. 14; *Haskins* v. *People* (1857) 16 N. Y. 344. Some decisions intimate that conspiracy was at common law a continuing crime. They rest upon a dictum in *Rex* v. *Brisac and Scott* (1803) 4 East 163, which makes no reference to continuing crimes, but merely says that the overt act may determine the locus of the crime. If the overt act was in B, the offense is punishable there, although but one conspirator was present in B and the conspiracy was formed in A. *People* v. *Arnold* (1881) 47 Mich. 268; *Commonwealth* v. *Gillespie* (Pa. 1822) 7 Serg. & R. 469. Conspiracy is largely a matter of inference from the overt act. If a joint act is established the conspiracy may be inferred from the circumstances attending the act and need not be directly proved. *People* v. *Bentley* (1888) 75 Cal. 407; *Ochs* v. *People* (1888) 124 Ill. 399; *Musser* v. *State* (1901) 157 Ind. 423; *Farley* v. *Peebles* (1897) 15 Neb. 723. If the act be done by one conspirator, the unlawful combination must be directly proved, but when so proved would seem to continue as an inference of fact up to the time of commission of the overt act; and this inference would be unaffected by the absence of the other conspirators from the jurisdiction. This being so, jurisdiction of the absent conspirators is acquired by the familiar rule that the act of one conspirator is the act of all. *United States* v. *Cole* (U. S. 1853) 5 McLean 513. The overt act not being essential at common law, *State* v. *Buchanan* (Md. 1821) 5 Har. & J. 317; *Commonwealth* v. *Judd* (1807) 2 Mass. 329; *People* v. *Richards* (1849) 1 Mich. 216; *Commonwealth* v. *McKisson* (Pa. 1882) 8 Serg. & R. 419, conspiracy is really a psychical crime. The doctrine of agency brings the defendant within the jurisdiction and, his unlawful intent existing at the time, the crime is complete. There is here no fiction bringing the intent into the jurisdiction. An intent has no *locus*, it simply exists. This is illustrated by the case of a crime committed by an innocent agent of a principal without the jurisdiction. *Lindsay* v. *State* (1882) 38 Oh. St. 507; *Commonwealth* v. *White* (1877) 123 Mass. 430. But in the case of a continuing crime a fiction is employed to bring a physical act, an essential of the crime, into the jurisdiction: in larceny, the trespass. It would seem that this doctrine should be limited to cases where there exists at least one essential element of the crime within the jurisdiction—as in larceny, the asportation—for otherwise, mere physical presence would be sufficient to confer jurisdiction over any criminal, guilty of any crime, committed anywhere. Accordingly statutes making robbery indictable in any jurisdiction into which the property is taken, Burns' R. S. Ind. 1894, Sec. 1654, or embezzlement where possession of the goods is made essential by statute, may be supported. *Brown* v. *State* (1887) 23 Tex. App. 214. If not essential, *Commonwealth* v. *Parker* (1896) 165 Mass. 526; *People* v. *Garcia* (1864) 25 Cal. 531, the embezzlement cases

and cases passing on similar statutes covering burglary, Burns' R. S. Ind. 1894, Sec. 1654, would seem unsupportable except upon the ground that the legislatures chose to call the crime of bringing stolen goods into the State the crimes of embezzlement and burglary.

In a recent case in the Circuit Court of Appeals, the Armour Packing Company was indicted for violation of the Elkins Act, U. S. Comp. St. Supp., 1905, p. 599, prohibiting the receipt of any rebate or concession in respect of the transportation of property "whereby any such property shall by any device whatever be transported" and providing for prosecution "in any court of the United States having jurisdiction of crimes within which such violation was committed or through which the transportation may have been conducted." The crime was committed originally in Kansas, and the indictment found in Missouri. The court upheld the constitutionality of the jurisdiction clause on the ground that the offense was a continuing crime. *Armour Packing Co.* v. *United States* (1907) 153 Fed. 1. If the transportation was made an essential element of the crime by the statute, the decision seems sound, since both the receipt of the rebate and the transportation took place in Kansas, and one of these elements existed in Missouri. The court stated two questions: first, whether the crime could be held to continue; second, whether the transportation was an essential element; and after deciding the first considered it unnecessary to decide the second. It seems that the decision of the first necessarily involved a decision of the second.

VIEW BY THE JURY AS EVIDENCE AND NECESSITY OF THE JUDGE'S PRESENCE AT THE VIEW.—The practice of permitting the jury to view premises about which there was a controversy, existed at common law in England at an early period and prior to any statutory enactment on the subject, 3 Bac. Abr. (5th Ed.) tit. Juries *270; Glanville, Bk. 11, c. 1; Bracton, de Leg. et Cons. f. 315; Fitzherbert, Natura Brevium, 123c, 128b, 184e, and the view together with the personal knowledge of the jurors formed the basis of the verdict. A view was long granted as of course after the cause had been brought on to trial, and after the Statute 4 & 5 Ann. c. 16 sec. 8, a view might be granted in civil cases in the first instance previous to the trial. Ld. Mansfield in *Rules for Views* (1757) 1 Burr. 252. Due to the abuses of the view for purposes of delay, Lord Mansfield held that the words of the statute meant that the Court should grant the view only when proper and necessary, and that it was so when "the evidence might not be understood without it." *Rules for Views, supra.* This change in the purpose of the view from a basis for the verdict to an aid in understanding the evidence presented in open court, was in line with the change in the conception of evidence from personal knowledge to facts placed before the jury in court. The fact that it was not necessary for the whole jury to be present at a view seems to militate against a conception of the view as evidence in the modern sense. 3 Bac. Abr. *supra;* Co. Lit. 158, 1. Views are now almost universally permitted by statute, 92 Am. Dec. 342, note; Wigmore, Ev. sec. 1163 and notes, but only when necessary and proper for a better understanding of the evidence. *People* v. *Thorn* (1898) 156 N. Y. 286; *Vane* v. *Evanston* (1894) 150 Ill. 616; *Close* v. *Samm* (1869) 27 Ia